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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,596	10/19/2000	Lily Barkovic Mummert	YOR920000461-US1	8300
7590 11/05/2004 Anne Vachon Dougherty 3173 Cedar Road Yorktown Heights, NY 10598			EXAMINER TODD, GREGORY G	
			ART UNIT 2157	PAPER NUMBER
DATE MAILED: 11/05/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/692,596

Applicant(s)

MUMMERT ET AL.

Examiner

Gregory G Todd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) \*
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. This is a first office action in response to application filed, with the above serial number, on 19 October 2000 in which claims 1-20 are presented for examination. Claims 1-20 are therefore pending in the application.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the impact value and plurality of impact values in the apparatus claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant

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will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the change" in line 6. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Borowsky et al (hereinafter "Borowsky", 6,119,174).

As per Claim 1, Borowsky teaches a method for evaluating workload across a processing environment having a plurality of computer systems each having a plurality of assigned workload units comprising the steps of:

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assigning a plurality of impact values, one to each workload unit assigned for each of the plurality of computing systems, said assigning comprising determining the change in system expiration date should each one of said plurality of workload units be removed from the system (at least col. 7, lines 30-67; computation of units of the workload distribution); and

assessing the workload based on said impact values (at least col. 7, lines 30-67; issue / reassessing current assignment).

As per Claim 2. The method of Claim 1 wherein the change in system expiration date is determined based on system life expectancy (at least col. 5, lines 27-47; col. 6, lines 3-29; device failure).

As per Claim 3. The method of Claim 1 wherein the change in system expiration date is determined based on capacity space (at least col. 6, lines 3-29; capacity).

As per Claim 4. The method of Claim further comprising sorting said workload units based on said impact values into a sorted impact list (at least col. 8, lines 26-67; queue).

As per Claim 5. The method of Claim 1 further comprising altering the processing environment to change the expiration workload in the dates of at least two of said plurality of computer systems (at least col. 6, lines 40-52; capacity planning for response time).

As per Claim 6. The method of Claim 1 further comprising comparing the expiration date each said plurality of computing systems to at least one target

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planning date for servicing each of said plurality of computing systems (at least col. 6, lines 40-52; planning response time for target system).

As per Claim 7. The method of Claim 6 further comprising altering the workload in the processing environment to change the expiration date relative to the target planning date for at least two of said plurality of computer systems (at least col. 6, lines 40-52; quality of service attributes associated with capacity planning).

As per Claim 8. The method of Claim 6 further comprising the steps of:  
creating a From list of computer systems for which the expiration date precedes the at least one planning date (at least col. 7, lines 30-67);

creating a To list of computer systems for which the expiration date is later than said least one planning date (at least col. 7, lines 30-67); and

reassigning workload units from computer systems on said From list to computer systems on said To list based on said impact values (at least col. 7, lines 30-67; issue / reassessing current assignment based on expected value for the workload distribution).

As per Claim 9. The method of Claim 8 further comprising calculating new expiration dates for computer systems on said From and said To lists after said reassigning (at least col. 7, lines 30-67; col. 8, lines 26-54; computing p-quantile to be lowered than desired bound T).

As per Claim 11. The apparatus of Claim 10 further comprising at least one storage location accessible by the administrative processor for storing data

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relating said plurality of computer systems (at least col. 6, lines 3-20; virtual store).

Claims 10 and 12-20 do not add or define any additional limitations over claims 1-9 and therefore are rejected for similar reasons.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hartsell et al, Mummert et al, Flockhart et al, and Sanders et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G Todd whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd 

Patent Examiner

Technology Center 2100

  
SALEH NAJJAR  
PRIMARY EXAMINER